

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7556

Petition of Global NAPs, Inc., for declaratory)
judgment and request for interim injunctive)
relief against Telephone Operating Company of)
Vermont LLC, d/b/a FairPoint Communications,)
for unauthorized billing of switched access)
usage services for termination of voice over)
internet protocol ("VoIP") traffic)

Order entered: 11/18/2009

PROCEDURAL ORDER

On October 13, 2009, I convened a prehearing conference in this docket. Appearances were entered by the following individuals: Phyllis Rubenstein, Esq., and William Rooney, Esq., on behalf of Global Naps, Inc. ("GNAPs"); Benjamin Marks, Esq., and Peter Zamore, Esq., Sheehey, Furlong & Behm, on behalf of Telephone Operating Company of Vermont, d/b/a FairPoint Communications ("FairPoint"); and James Porter, Esq., on behalf of the Vermont Department of Public Service (the "Department").

At the prehearing conference, I granted the following motions for leave to appear *pro hac vice* in this proceeding, all of which were unopposed: William Rooney, Esq. and Joel Davidow, Esq., on behalf of GNAPs; and Michael Morrissey, Esq. and Sarah Davis, Esq., on behalf of FairPoint.

Following a brief discussion among the parties, I set a deadline of October 23, 2009, for the parties to either jointly or separately file proposed procedural schedules for moving forward in this docket.¹

On October 23, 2009, FairPoint submitted a proposed schedule (the "Proposed Schedule"), along with a cover letter indicating that the Department had consented to FairPoint's

1. Tr. 10/13/09 at 8.

proposed schedule. GNAPs neither joined in FairPoint's filing, nor separately filed an alternative proposal.

On October 30, 2009, Fairpoint filed a request with the Vermont Public Service Board (the "Board") for a 10-day extension of any filing deadlines arising during the period of October 26, 2009, through November 13, 2009. FairPoint's extension request was due to its "recent filing for voluntary reorganization under Chapter 11 of the U.S. Bankruptcy Code."² On November 5, 2009, the Board issued a general scheduling order granting FairPoint's requested 10-day extension.³ The Board further directed FairPoint to file by November 16, 2009, any proposed scheduling changes for any of the pending dockets affected by the Extension Order.⁴

On November 2, 2009, GNAPs filed a motion in this docket seeking reconsideration ("Reconsideration Motion") of my bench ruling of October 13, 2009,⁵ in which I denied GNAPs' petition for a preliminary injunction to restrain FairPoint from terminating its existing telecommunications interconnections in Vermont with GNAPs pending the resolution on the merits of the billing dispute at issue in this proceeding. Under ordinary circumstances, the deadline for FairPoint to reply to the Reconsideration Motion would have been November 17, 2009.⁶

On November 16, 2009, FairPoint filed a letter in this docket indicating the need to amend its Proposed Schedule to reflect the effects of the 10-day extension granted in the Extension Order. In that letter, FairPoint further proposed November 27, 2009, as the deadline for responding to the Reconsideration Motion. I find this proposed deadline to be reasonable, as it reflects an allowance for the fifteen-day response time to which FairPoint is entitled under V.R.C.P. 78(b), as well as the 10-day extension required by the Extension Order. However, to

2. Dockets No. 7270, 7271, 7316, 7354, 7355, 7506, 7507, 7527, 7539, 7540, 7556, Order dated 11/5/09 at 1 (the "Extension Order").

3. Extension Order at 4. Docket 7556, the instant case, is among the proceedings affected by the Extension Order.

4. *Id.*

5. Tr. 10/13/09 at 105.

6. V.R.C.P. 78(b) provides that "[a]ny party opposed to the granting of a written motion shall file a memorandum in opposition thereto, not more than 15 days after service of the motion, unless otherwise ordered by the court."

accommodate the observance of the Thanksgiving holiday period, I will set the due date for the following Monday.

Having reviewed FairPoint's Proposed Schedule, I find that it reflects tight deadlines that are likely to be too ambitious given the approach of the holiday season and the increased resource demands occasioned by FairPoint's pending bankruptcy proceeding. Therefore, I adopt the following modified version of the Proposed Schedule:

November 30, 2009	Responses, if any, due to be filed to the Reconsideration Motion.
December 14, 2009	Parties to advise me whether they have reached a stipulation of material facts for resolving the issues in this docket.
January 4, 2010	Parties to file motions or cross-motions for Summary Judgment if a stipulation of material facts has been reached; absent such a stipulation, GNAPs shall file direct testimony.
January 19, 2010	FairPoint and Department to serve discovery upon direct testimony filed on January 4, 2010.
February 1, 2010	GNAPs' responses due to discovery served on January 19, 2010.
February 15, 2010	FairPoint and Department to file direct testimony.
March 1, 2010	GNAPs to serve discovery upon direct testimony filed on February 15, 2010.
March 15, 2010	FairPoint and Department responses due to discovery served on March 1, 2010.
Week of March 15, 2010	Technical hearings

SO ORDERED.

Dated at Montpelier, Vermont, this 18th day of November, 2009.

s/June E. Tierney
June E. Tierney, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: November 18, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)